Carriers of Passengers — Physical Examination — Damages — Presumption of Negligence.—Several interesting questions were considered in the case of *Alabama G. S. R. Co.* v. *Hill*, 9 South. Rep. 722 (Ala.). The plaintiff was injured on the defendant's railroad on account of the derailment of the car in which she rode. *Held*, that where a physical examination of the plaintiff's person is allowed, the selection of experts to make the examination is "entirely within the discretion of the trial judge. Neither party has any right, by suggestion, motion, or otherwise, to control his discretion in any degree. * * * And when a competent and impartial commission is named, it is a matter of no consequence whatever that the parties, or either of them, preferred and demanded the appointment of other persons." It is permissible to show in evidence that, prior to the accident, the plaintiff's health was good, that her physical organs discharged their functions naturally, etc., and that, since the accident, she could not sleep without taking medicine, could not walk any great distance, and that her injuries would render child-bearing perilous to life. As to the possibility of her never marrying or having children, the court says, "these considerations can exert no influence on the question. It is to be assumed that every physical endowment, function, and capacity is of importance in the life of every man and woman, and that occasion will arise for the exercise of each and all of them; and to that extent to which any function is destroyed, or its discharge rendered painful or perilous by the wrongful infliction of personal injury, is the party complaining entitled to damages." The law requires "strict diligence" on the part of common carriers of passengers; and where the plaintiff has shown injury from an accident, the presumption that the carrier was negligent arises. Punitive damages may be given if "the condition of the rails and cross-ties, and the fact of old rails being used constantly to repair that old track, was sufficient to authorize an inference on the part of the jury that the defendants knew of this condition of things, and to impute to them such recklessness or wantonness as is the equivalent of conscious wrong-doing, in continuing to run trains over a track in such dangerous condition."

Contractor's Bonds — Rights of Sureties. — *Kiessig* v. *Allspaugh et al.*, 27 Pacific Reporter 655. One of the defendants in this case, Lundeen, was surety for his co-defendants, Allspaugh and Hall, upon a bond executed to plaintiff to indemnify and save him harmless against any claims or liens for material or labor used or employed in the construction of a building, which the principals in

the bond had contracted to erect. The bond had incorporated in it the contract between the plaintiff and Allspaugh and Hall, whereby the plaintiff was authorized to retain one-fourth of the contract price until final settlement between the parties thereto. When the building was completed the plaintiff paid the contractors the full amount of the contract price, but there was no evidence of the surety's assent to such payment. At the time of such payment there were valid unpaid liens, known to the plaintiff, for labor and material used in the erection of the building, which plaintiff was obliged subsequently to pay and which of course belonged to the contractors to remove. Plaintiff thereupon sued the obligors and surety on the bond to the amount of the liens paid. The Supreme Court of California held that the surety was not liable, since the sum which the contract authorized plaintiff to retain, and referred to in the bond, was charged with a trust in favor of the surety as security against the liens, and without his consent it could not be paid to his principals. The whole law on this subject is clearly expressed in a brief sentence of the opinion quoted from *Law* v. *East India Co.*, 4 Ves. 829. "It cannot be contended, upon any principle that prevails with regard to principal and surety, that when the principal has left a sufficient sum in the hands of the obligee, and he thinks fit, instead of retaining it in his hands, to pay it back to the principal, the surety can be called upon."

Master and Servant—Liability for Servant's Torts—Ratification.—The Supreme Court of Massachusetts in the recent case of *Dempsey* v. *Chambers*, 28 N. E. Rep. 279, has considered the question of ratification under peculiar circumstances. The plaintiff ordered coal of the defendant. A third person, McCullock, without the knowledge of the defendant, delivered the coal, and in so doing broke a pane of plate glass in the plaintiff's building. Afterwards, with full knowledge of the accident and delivery of the coal by McCullock, the defendant presented a bill to the plaintiff and demanded payment. Plaintiff sued for the injury to the plate glass and the lower court held he could recover, finding that though McCullock was not the servant of the defendant at the time of the accident, the defendant ratified his delivery of the coal when he presented the bill to the plaintiff. This the Supreme Court holds was correct: "The delivery was for the plaintiff's benefit, and while the ratification was not directed specifically to the trespass, which was not for the defendant's benefit, if taken by itself, yet it was so connected with McCullock's employment that